



Washington State Senate

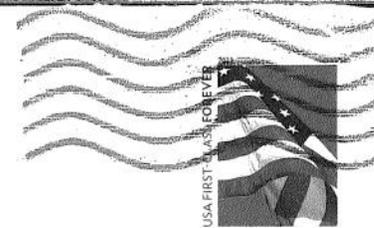
PO Box 40406, Olympia, WA 98504-0406

Senator Jeff Holy

6th Legislative District

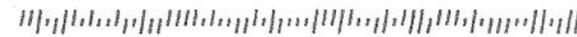
SPOKANE WA 990

14 JUL 2021 PM 3 L



The Honorable Bob Ferguson
Washington State Attorney General
PO BOX 40100
Olympia WA 98504-0100

98504-0100





Washington State Senate

Olympia Address:
PO Box 40406
Olympia, WA 98504-0406

Senator Jeff Holy
6th Legislative District

Telephone: (360)786-7610
Toll-Free: 1-800-562-6000
E-Mail: Jeff.Holy@leg.wa.gov

July 9th, 2021

The Honorable Robert Ferguson
Attorney General of the State of Washington
1125 Washington Street Southeast
Olympia, Washington 98504-0100

RECEIVED
PRCS

JUL 19 2021

ATTORNEY GENERAL
OF WASHINGTON

Dear Attorney General Ferguson:

I write to request a formal Attorney General Opinion addressing an issue of paramount importance to the 6th Legislative District, which is home to Fairchild Air Force Base (FAFB) and its neighboring local government entities. FAFB is Spokane County's largest employer with a total economic impact of approximately \$448 Million in 2018 alone.

Specifically, there exists two state statutes: RCW 36.70A.530(3), and RCW 35.63.161 that appear in conflict. Understanding whether clarifying legislation is needed to address this apparent conflict in Washington state law would be inordinately helpful to the Legislature, local government entities in Spokane County, and other jurisdictions in Washington that are adjacent to military installations.

The statutory text and legislative findings of the Growth Management Act (GMA), RCW 36.70A.530(3), require local governments to prevent "*development in the vicinity of a military installation that is incompatible with the installation's ability to carry out its mission requirements.*" In *Airway Heights v. Eastern Washington Growth Management Hearings Board*, 193 Wash.App. 306 (Div. III 2016), the Washington State Court of Appeals reaffirmed this mandate in striking down a municipal ordinance that, it held, would allow residential development in an area identified by a Joint Land Use Survey (JLUS) as a military influence area.

Since the enactment of RCW 36.70A.530 on June 10, 2004, the City of Airway Heights, Spokane County Board of County Commissioners and the State Legislature have taken several steps to reduce residential encroachment on FAFB. An obstacle to these efforts is the existence of eight mobile home parks, located in an area adjacent to FAFB, which the JLUS identified as an Accident Protection Zone (APZ) due to the potential impact of an aircraft accident. Although the local government entities would like to gradually relocate the residents of these mobile home parks to a safer, affordable area that is compatible with FAFB's operations, its ability to take effective and lasting action on residential density is called into question by a competing statute.

RCW 35.63.161, which became effective on the same date as RCW 36.70A.530, appears to prevent the local governments from prohibiting the backfilling of residents and mobile homes that are relocated out of the APZ. Specifically, RCW 35.63.161 provides the following:

(1) After June 10, 2004, a city may designate a new manufactured housing community as a nonconforming use but may not order the removal or phased elimination of an existing manufactured housing community because of its status as a nonconforming use. (2) A city may not prohibit or require the removal of a manufactured/mobile home park model or recreational vehicle authorized in a manufacturing housing community under Chapter 59.20 RCW on the basis of the community's status of a nonconforming use.

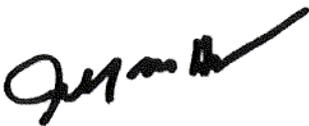
Under this statutory scheme, it is uncertain whether local governments can effectively implement the mandate of the GMA to prevent development incompatible with FAFB's mission, because efforts to relocate mobile home residents in the APZ may not result in a net decrease in residential density and encroachment. The zoning in this area is currently RM (Manufactured Housing Residential) and is proposed to be I-2 (Heavy Industrial Zone) to reduce population density and make the area more compatible with FAFB's mission. Even if residents and mobile homes are removed from the APZ pursuant to this rezone, RCW 35.63.161 appears to leave local governments powerless to stop a new tenant or mobile home from backfilling the vacated land.

To that end, I ask that you issue a formal opinion on the following question:

Does RCW 35.63.161 prevent a local government from ordering the removal or phased elimination of an existing manufactured housing community for nonconforming use when the basis for the local government's nonconforming use determination is the protection of a military installation from incompatible development, as mandated by the Growth Management Act, RCW 36.70A.530(3)?

The answer to this question will provide greater clarity as we endeavor to preserve and enhance our community's partnership with FAFB today and in the years to come. Thank you for your consideration.

Sincerely,



JEFF HOLY
Washington State Senator
6th Legislative District